

The Honorable Ronald B. Leighton

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA**

TINA L. HART,

Plaintiff,

v.

SSA MARINE, INC., a Washington
corporation; PACIFIC MARITIME
ASSOCIATION, a California corporation; and
INTERNATIONAL LONGSHORE AND
WAREHOUSE UNION, LOCAL 21.

Defendants.

No. C08-5248 RBL

STIPULATED PROTECTIVE ORDER

Plaintiff, Tina Hart, through her counsel of record, Anne-Marie E. Sargent and
Stephen P. Connor of Connor & Sargent PLLC, Defendants International Longshore and
Warehouse Union, and International Longshore and Warehouse Union, Local 21, through its
counsel of record, Beth Ross and Jacob Rukeyser of Leonard Carder LLP, and Defendant
Pacific Maritime Association, through its counsel Clemens Barnes of Graham & Dunn PC,
hereby stipulate as follows:

1 **1. Confidential Information**

2 “Confidential Information” as used herein shall mean any information disclosed in
3 this proceeding, whether disclosed in an interrogatory answer, during a deposition, by way of
4 a written statement in a document, or otherwise, that a party designates as “confidential”
5 irrespective of who produced the information, and that relates to: medical records and
6 medical information; trade secret and proprietary business information as defined in the
7 Uniform Trade Secrets Act, RCW 19.108.010(4), and/or information concerning personnel,
8 pay, tax identification numbers, or employment records of current or former employees of, or
9 members of the bargaining units represented by, Defendants other than the Plaintiff.

10 A party may designate any document produced in discovery as Confidential
11 Information by stamping the word “CONFIDENTIAL” thereon. Even if not initially stamped
12 “CONFIDENTIAL” prior to production, both parties reserve the right to identify as
13 confidential any documents produced for inspection and selected by the receiving party for
14 copying. Such Confidential Information, marked “CONFIDENTIAL,” shall not be utilized or
15 disclosed by the receiving party, its agents or its employees, except in accordance with the
16 terms of this Order.

17 A party may designate portions of deposition transcripts, or transcripts as a whole, to
18 constitute Confidential Information which are then subject to this order. A party may
19 designate those portions of the testimony in the transcript as containing Confidential
20 Information at the time of the deposition or thirty (30) days after receipt of the transcript. The
21 reporter shall promptly conform the original copy by noting on the cover of the deposition
22 transcript that portions of the deposition transcript contain confidential information and by
23 stamping the word “CONFIDENTIAL” on each page, and counsel shall conform their copies
24 of the transcript in accordance with the designation. The portions so designated shall
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1 thereafter not be utilized or disclosed by the other party, its agents or its employees, except in
2 accordance with the terms of this Order. However, if portions of the transcript must be filed
3 within 30 days in court, the designating party must move for protection of those portions after
4 filing.

5 Notwithstanding the designation as “CONFIDENTIAL” of any testimony, evidence or
6 other matters as provided above, said documents, testimony, evidence and matters shall not in
7 fact be deemed Confidential Information and shall not be subject to this Order, if the other
8 party sustains the burden of showing that the substance thereof:

9 (i) is, at the time of disclosure by the designating party, public knowledge by
10 publication or otherwise;

11 (ii) becomes at any time, through no act or failure to act on the part of the receiving
12 party and without breach of any obligation of confidence, public knowledge;

13 (iii) is, at the time of disclosure by the designating party, already in the possession of
14 the receiving party and was not acquired directly or indirectly from the designating party,
15 although this provision shall not apply to medical information, or information related to
16 leaves of absence or requests for leave; or

17 (iv) has been made available to the receiving party by a third party who obtained the
18 same by legal means and without any obligation of confidence to the designating party.

20 **2. Reasonable Efforts**

21 The parties shall use reasonable efforts to designate Confidential Information only as
22 necessary to protect their respective interests, including the interests of members of the
23 bargaining units represented by Defendants. Any information, document, transcript or thing
24 not designated as “CONFIDENTIAL” shall not be covered by this Order, provided, however,
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1 that medical records and discipline records of non-party employees are CONFIDENTIAL
2 regardless of whether they have been marked, and provided further that inadvertent
3 production of any information, document or thing without a designation of
4 “CONFIDENTIAL” shall not in and of itself be deemed a waiver of any party’s claim of
5 confidentiality as to such matter, and the party thereafter may designate the same as
6 “CONFIDENTIAL.” Further, if any information is initially undesignated and a party later
7 determines that the information is confidential, it shall notify the other parties of the new
8 Confidential Information designation and provide replacement documents with the
9 appropriate CONFIDENTIAL mark. The new designation will be effective upon receipt of
10 such notification and replacement documents, and will be implemented as soon as reasonable
11 by the receiving party. Disclosure by any party of such matter prior to notice by any party of
12 the confidential nature thereof shall not be deemed a violation of this Order.

13 **3. Persons Bound By This Order**

14 The persons bound by this Order are:

- 15 (a) All present parties to this proceeding;
- 16 (b) All individual, corporations or other entities who later appear as parties to the
17 proceeding;
- 18 (c) The employees, agents, and attorneys of the parties, including counsel of
19 record, experts and consultants; and
- 20 (d) All third party respondents to any discovery request by any party.

21 In the event that additional persons become parties to this litigation, they shall not
22 have access to Confidential Information produced by or obtained from any party until such
23 new party and the existing parties execute a copy of this Stipulation and Protective Order.
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1 **4. Obligations of Persons Bound By This Order**

2 No person bound by this Order shall disclose Confidential Information to any other
3 person other than as provided in paragraph 5 below. No person bound by this Order shall use
4 Confidential Information for any purpose other than the prosecution or defense of this
5 proceeding. The attorneys of record for the parties to this proceeding shall make the terms of
6 this Order known to all others persons bound by this Order and, together with their clients,
7 are responsible for compliance with this Order.

8 **5. Person Who May Receive Confidential Information**

9 The only persons to whom confidential Information may be disclosed (“Designated
10 Persons”) by either party are:

11 (a) Parties and attorneys of record for any parties to this proceeding requesting
12 discovery of the Confidential Information, including the paralegal, stenographic, contract and
13 clerical employees associated with the attorneys;

14 (b) Members of any party’s in-house legal staff, including attorneys, paralegals
15 and staff, who are directly involved in this proceeding,

16 (c) Third party experts, consultants and investigators who are assisting the parties
17 or the attorneys in this proceeding; however, prior to disclosure of any Confidential
18 Information, such third parties shall agree to be bound by this Order;

19 (d) Any person upon the written agreement of the attorneys for the parties, or
20 upon Order of the Court;

21 (e) The Court, judges and Court personnel in pleadings or testimony related to this
22 matter;

1 (f) Actual and potential witnesses to the extent necessary to verify or challenge
2 the information; or

3 (g) Court reporters involved in taking depositions in this case.

4 No Confidential Information may be disclosed, either directly or indirectly, except by
5 prior written approval of the parties or pursuant to an order of this court (where applicable),
6 except to the persons specified above.

7 **6. Confidentiality Challenge**

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9 If any party to the proceeding believes that designated Confidential Information
10 should not be subject to this Order, the party may provide written notification to the other
11 party. The notice shall clearly specify the designated information and the reason(s) for the
12 belief that the designated information is not properly subject to this Order. The designating
13 party may bring a motion seeking an order of the court to determine if the designated
14 Confidential Information is properly subject to this Order. If such a motion is brought, the
15 designated Confidential Information shall remain subject to this Order until the court makes
16 its determination. At the time for hearing any such motion, the party seeking to hold the
17 information confidential shall have the burden of going forward with evidence to show that
18 the information designated as confidential should come within the protection of this Order.

19 **7. Confidential Information in Court Filings and at Trial**

20 All Confidential Information that is submitted to or filed with the Court shall be
21 submitted or filed under separate cover and shall be placed under seal, pursuant to Local Civil
22 Rule 5(g). Likewise, any filing that references information or records that have been
23 designated "Confidential Information" shall be filed under seal, pursuant to Local Civil Rule
24 5(g). With respect to employee discipline records, filing such Confidential Information under
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1 seal shall not be necessary if the Confidential Information is redacted to remove all letters of
2 the non-party's last name except the first letter, and the non-party's, contact information and
3 social security number. The parties will discuss with the Court in the pre-trial conference the
4 handling of such information at trial.

5 The designation of any information, documents or things as confidential during
6 discovery does not imply agreement nor raise an inference of such a designation or treatment
7 at trial.

8 **8. Amendments of Order**

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10 Any party may move for relief from, or general or particular modification of, the
11 mechanism and need for maintaining confidentiality provided in this Order or the application
12 of this Order. Subject to Court approval, this Order may be amended by the written
13 agreement of counsel for the parties to this agreement and any pertinent third parties in the
14 form of a stipulation.

15 **9. Duration of Order**

16 This Order is intended to regulate the handling of Confidential Information during the
17 entirety of this proceeding and thereafter, and shall remain in full force and effect until
18 modified, superseded or terminated on the record by agreement of all the parties to this
19 proceeding and any pertinent third parties or by Order of the Court. This Order shall become
20 effective as between the parties when executed, with or without the Court's entry of same.

21 **10. Miscellaneous**

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23 (a) Nothing in this Order prevents a party from seeking additional or difference
24 protection of Confidential Information.
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1 (b) The information protected by this Order is the substance of the Confidential
2 Information, no matter what form the information is in and no matter how the information
3 might be communicated. The parties do not intend to in any way waive and hereby expressly
4 reserve their right to assert and preserve the confidentiality of any information disclosed in
5 this Proceeding that is not designated as Confidential Information pursuant to this Order.

6 (c) Recipients of Confidential Information pursuant to this Order shall exercise
7 reasonable and appropriate care with regard to such Confidential Information to ensure that
8 the confidential nature of the same is maintained.

9 (d) In the event any person in receipt of Confidential Information shall receive a
10 written oral request, subpoena, or court order seeking disclosure of another party's
11 Confidential Information, such person shall immediately, upon receipt of such request,
12 subpoena, or court order notify counsel for the party that produced the Confidential
13 Information of the request, subpoena, or court order and shall provide a copy of the same.
14 Except in the case of an order requiring immediate production of the requested information,
15 neither party shall disclose the other party's Confidential Information without giving the other
16 party an opportunity to seek from this court an order governing disclosure of the requested
17 information.

18 (e) If Confidential Information is disclosed to any person other than in the manner
19 authorized by this Order, the person responsible for the disclosure shall immediately bring all
20 the pertinent facts relating to such disclosure to the attention of counsel for all parties without
21 prejudice to the right's and remedies of any party, and shall make every effort to prevent
22 further disclosure by it or by the person who was the recipient of such information.

23 (f) This Order is made to facilitate discovery and the production of discoverable
24 evidence in this action. Neither the execution of this Stipulated Order by the parties, the
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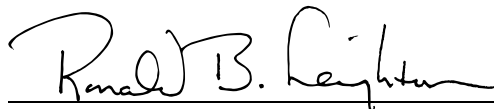
1 designation of any information as Confidential Information under the Order, the failure to
2 make such designation, or the failure to object to such designation by either party shall
3 constitute evidence with respect to any issue in this litigation. This Order shall not abrogate
4 or diminish any contractual, statutory other legal right or obligation any party may have with
5 respect to information disclosed in this matter.

6 (g) Nothing herein shall prevent a Designating Party from using or disclosing its
7 own Confidential Information.

8 **ORDER**

9 **IT IS SO ORDERED.**

10 DATED this 14th day of July, 2009.

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13 RONALD B. LEIGHTON
14 UNITED STATES DISTRICT JUDGE
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16 Jointly Presented by:
17 s/ Stephen P. Connor
18 WSBA #14305
19 Anne-Marie E. Sargent #27160
20 CONNOR & SARGENT PLLC
21 1200 Fifth Ave Ste 1650
22 Seattle, WA 98101
23 Tel: (206) 654-5050
24 Fax: (206) 624-5469
25 Email: steve@cslawfirm.net
Email: aes@cslawfirm.net
Attorneys for Plaintiff Hart

1 s/ Robert H. Lavitt

2 WSBA #27758

3 SCHWERIN CAMPBELL BARNARD IGLITZIN &
4 LAVITT

5 18 W Mercer St Ste 400

6 Seattle, WA 98119

7 Tel: (206) 285-2828

8 Fax: (206) 378-4132

9 Email: lavitt@workerlaw.com

10 *Attorneys for ILWU and ILWU Local 21*

11 s/Jacob F. Rukeyser

12 Admitted *Pro Hac Vice*

13 LEONARD CARDER LLP

14 1188 Franklin St Ste 201

15 San Francisco, CA 94109

16 Tel: (415) 771-6400

17 Email: jrukeyser@leonardcarder.com

18 *Attorneys for ILWU and ILWU Local 21*

19 s/Clemens H. Barnes

20 WSBA #4905

21 Graham & Dunn PC

22 2801 Alaskan Way, Suite 300

23 Seattle, WA 98121-1128

24 Tel: (206) 340-9681

25 Fax: (206) 340-9599

Email: cbarnes@grahamdunn.com

Attorneys for PMA